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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/049,697	06/05/2002	Michael P. Ryan	AWDH1-PCTUS	4628

7590 11/15/2004

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EXAMINER	
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ART UNIT	PAPER NUMBER
3652	

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Please find below and/or attached an Office communication concerning this application or proceeding.

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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/049,697
Filing Date: June 05, 2002
Appellant(s): RYAN ET AL.

Albert W. Davis, Jr.
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 7/27/04.

(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The brief contains a statement that there are no related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

The rejection of claims 9-26 stand or fall together because appellant's brief includes a statement that this grouping of claims stand or fall together.

(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,183,185	Zanzig et al	2/2001
4,096,959	Schaffler	6/1978
3,202,305	Dempster et al	8/1965
4,986,716	Winter	1/1991

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 9-26 are rejected under 35 U.S.C. 112/1st paragraph. This rejection is set forth in a prior Office Action, mailed on 4/27/04.

Claims 9-26 are rejected under 35 U.S.C. 112/2nd paragraph. This rejection is set forth in a prior Office Action, mailed on 4/27/04.

Claims 9, 10, 12, and 13 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 4/27/04.

Claims 11 and 14 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 4/27/04.

Claims 15, 16, 18, 19, 21-23, and 25 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 4/27/04.

Claims 17, 20, 24, and 26 are rejected under 35 U.S.C. 103(a). This rejection is set forth in a prior Office Action, mailed on 4/27/04.

(11) Response to Argument

Appellant firstly argues the 112/1st and 2nd paragraph rejections, both of which center around the use of the term "fleet". Appellant begins by asserting that rejecting the claims for this reason was inappropriate in that the issue was never raised throughout

prosecution, and thus appellant had "no chance ... to amend the claims". While this is not an appealable issue, it is really a moot point anyway because the previous office action (in which prosecution was reopened) was made non-final and specifically stated (paragraph 1) that applicant did have the option of filing a reply or reinstating the appeal. Appellant further offers to "substitute language that is deemed appropriate" and "provide an affidavit". However, by choosing to reinstate the appeal, appellant gave up the right to submit amendments, affidavits, or other evidence. As for the use of the term "fleet" itself, appellant states that the term is appropriate since the vehicles in the fleet would initially be owned by the manufacturer. However, what is not clearly set forth by the scope of the claims is what happens when an owner or operator acquires two or more vehicles collectively meeting the literal scope of the claims but individually do not. In other words, an individual could conceivably own two or more different vehicles, acquired through distinct manufacturers, wholesalers, retailers, or other individuals, none of which individually infringe, but which collectively do, and yet have no reasonable expectation of knowing this. It is important to note that appellant is claiming a "fleet" of vehicles *per se*, not a method of or means for manufacturing the fleet, which is to what the objects of the invention, as set forth in the specification, are directed. The disclosure never specifies what constitutes a fleet.

Appellant's arguments concerning the 103 rejections center on the base Zanzig reference, alleging that there is no discussion in Zanzig of making the ends of the body modules of front, side, and rear loader RCVs similar. While this statement as a whole is true, it is what the combination of references taken together would have suggested to

one skilled in the art that is important. Zanzig shows two types of RCVs, as noted in the previously referenced office action. Appellant alleges that the drawings in Zanzig are not necessarily to scale, and that any appearance that the body modules are the same in the various embodiments is "purely coincidental". This is pure speculation, and even if appellant's "inside information" (appellant states that the reference and the instant application have the same assignee) regarding the reference is correct, the issue here is what the reference, on its face, would suggest to one of ordinary skill. Certainly, such an artisan would not logically conclude, absent any specific disclosure otherwise, that the body modules shown in the different embodiments have dissimilar ends. The body modules in figures 1-2 and 21-22 are shown as having the same reference numeral 50, which in patents having multiple embodiments is generally considered an indication (absent any evidence to the contrary) that an element is the same, or at least has no substantial differences, in each embodiment. A patent shows what a patent shows; appellant can not arbitrarily suggest that the apparent teaching of a reference is incorrect, when nothing in the reference supports such a suggestion, simply because the assignee is the same.

Finally, it is noted that appellant makes only a conclusory statement concerning the secondary references, relying solely on the analysis of Zanzig to support his position, and thus further discussion of these references is deemed unnecessary.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

James Keenan
Primary Examiner
Art Unit 3652

jwk
November 4, 2004

Conferees
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EL

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